Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

Term: October, 1993

THOMAS VENEZIA,

Plaintiff-Petitioner,

v.

BONDS ROBINSON, JR.,

Defendant-Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

AMIEL CUETO
Counsel of Record
7110 West Main St.
Belleville, IL 62223
(618) 277-1554

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A. QUESTIONS PRESENTED:

I. Was there federal jurisdiction in this case?

II. Does the U.S. Seventh Circuit Court of Appeals and/or the U.S. District Court for the Southern District of Illinois have the power to regulate the Illinois Code of Civil Procedure?

III. Did Thomas Venezia have the right to have extortion and bribery against him enjoined, even if the extortion and bribery were committed by a federal law enforcement officer who purported to be acting in his official capacity?

IV. Did Thomas Venezia have the right to engage in the lawful vending business in Belleville, Illinois, without a federal law enforcement officer interfering with that lawful business by telling the Belleville Liquor Commissioner that the FBI had a videotape of Thomas Venezia bribing president Bill Clinton?

V. Did Thomas Venezia have the same right to conduct discovery as every other litigant, the right this Court explained in Herbert v. Lando, 441 U.S. 153, 60 L.Ed.2d 115, 99 S.Ct. 1635 (1979) ?

VI. Did an Illinois state judge have the jurisdiction to rule on issues that were properly before him without the U.S. Seventh Circuit Court of Appeals complaining against the state judge to the Illinois Judicial Inquiry Board?

VII. Did the U.S. Seventh Circuit Court of Appeals err in denying Thomas Venezia's motion to supplement the record, given the fact that the U.S. District Court for the Southern District of Illinois had denied Thomas Venezia the right to conduct any discovery whatsoever?

B. LIST OF PARTIES:

All parties to this action appear in the caption.

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D. A REFERENCE TO THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THE CASE BY OTHER COURTS OR ADMINISTRATIVE AGENCIES.

The February 9, 1994 Order of the Seventh Circuit from which review is sought is contained in the appendix and is reported at 16 F. 3d 209. The May 18, 1993 opinion of the United States District Court of the United States District Court for the Southern District of Illinois is also contained in the appendix but has not been published in an official or unofficial reporter.

E. JURISDICTIONAL GROUNDS

The Seventh Circuit judgment sought to be reviewed herein was entered on February 9, 1994. (A-1-6) Venezia's request for rehearing was denied on March 2, 1994. (A-16) The jurisdiction of this court is invoked under 28 U.S. C. §1254(1).

F. THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED:

U.S. Constitution Amendment V
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See appendix A48 - 51 for verbatim text.

G. STATEMENT OF THE CASE

Thomas Venezia was and is an honest citizen, engaged in the vending business in St. Clair County, Illinios. Venezia's company is called B & H Vending. The county seat is Belleville. Bonds Robinson, Jr. was and is an officer for the Illinois State Liquor Control Commission. Before Robinson got his job with the state, he had been a police officer in Centreville (St. Clair County), Illinois. (R. 24, Exh. A, p. 106) Robinson was fired from his police officer's job for raping a prostitute in the back seat of his police car. (R. 24, Exh. A, p. 107)

During April of 1992, Robinson began soliciting bribes

from Thomas Venezia. (R. 12, Exh.2, p.40) On April 28, 1992, at 11:55 a.m. Venezia's lawyer - Thomas Daley - calling from Belleville, telephoned the headquarters of the Illinois Liquor Control Commission at 312-814-2218 in Chicago. (R. 17, Exh. A; R. 24, Exh. A, pp. 28-30) Daley spoke with Eric Wisette, Robinson's superior at the Commission, and reported that Robinson had been soliciting bribes from Venezia. (A-18) Wisette said it wouldn't surprise him if Robinson were soliciting bribes. (A-18) Wisette said he would put a stop to Robinson's misconduct. (A-18) This was Venezia's first report that Bonds Robinson, Jr. was soliciting bribes, and that report was made on April 28, 1992. Robinson later admitted under oath, that he was not working as a federal law enforcement officer before April 28, 1992. (R. 24, Exh. A, pp. 30-32)

Venezia next heard from Robinson in early August 1992. (R. 12, Exh. 2, p. 41) Robinson threatened Charles Tresser, a retired Air Force Chief who was the director of marketing for Venezia's company, that he (Robinson) would begin "knocking off" the taverns and nightclubs where B & H had accounts, unless Venezia agreed to pay bribes. (R. 12, Exh. 2, p. 41) Robinson was demanding a meeting. (R. 12, Exh. 2, p. 41) Venezia told Tresser to set up the meeting, so that Venezia could advise Robinson that "we won't do anything like that". (R. 12, Exh. 2, p. 41) Tresser arranged the meeting.

Robinson came to Venezia's place of business for the meeting on August 17, 1992. (R. 12, Exh. 2, p. 6) Robinson himself admitted under oath that at the meeting, he had demanded a bribe/extortion from Venezia of $250/week, or else he (Robinson) would begin raids and would seize Venezia's vending machines. (R. 12, Exh. 2, p. 21) Venezia told Robinson that he (Venezia) would not pay anything. (R. 12, Exh. 2, p. 45)

Immediately after the meeting, Venezia began composing a letter to Robert Haida, the State's Attorney for St. Clair County. (R 12, Exh. 2, p. 45) However Robinson continued to demand bribes over the next several days (R. 12, Exh. 2, p. 48), and on August 26, 1992, Robinson led a raid at VFW Post 4183 in St. Clair County. (R.12, Exh. 2, p. 45) Robinson seized four of Venezia's

vending machines. (R. 12, Exh. 2, p. 45) The next day Venezia sent his letter to Haida, reporting Robinson's bribe-attempts and the fact that Robinson had seized Venezia's machines because Venezia had refused to submit to Robinson's extortion. (R. 12, Exh. 2, pp. 46-47) This was Tom Venezia's second report, the first having been made on April 28, 1992. Venezia also sent a carbon-copy of the Haida letter to the FBI. (R. 12, Exh. 2, pp. 46-47)

The letter to State's Attorney Haida was hand-carried to him by Venezia's lawyer - Amiel Cueto. (R. 12, Exh. 2, pp. 46-47) Cueto delivered the letter to Haida at Haida's office on August 28, 1992, and Cueto and Haida discussed Robinson's bribe and extortion plot; they decided that Haida would call Robinson to the courthouse on September 1, 1992, on the pretext of a hearing, so that Cueto could subpoena Robinson to testify in the chancery court on that day; and that in fact was done. (R. 12, Exh. 2, p. 4) Robinson was served with both a subpoena and a Petition for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction. (R. 12, Exh. 2, p. 6) An evidentiary hearing was held, and at the conclusion the state court issued a preliminary injunction (R.2) which provided:

> "Upon verified petition and for good cause shown, this Court issues its Preliminary Injunction, enjoining and restraining Bonds Robinson, Jr. from threatening or coercing Thomas Venezia or any employee of Ace Music or B & H Vending; that Bonds Robinson, Jr. is enjoined and restrained from soliciting bribes or acts of extortion; that Bonds Robinson, Jr. is enjoined and restrained from unlawfully interfering with Thomas Venezia's Business and/or from unlawfully seizing the property of Thomas Venezia, Ace Music or B & H Vending."

The injunction was issued on September 1, 1992. On October 29, 1992 - 58 days later - Venezia filed a Petition for Rule to Show Cause. Between September 1 and October 29, neither Robinson nor the U.S. Attorney's Office for the Southern District of Illinois sought to dissolve the injunction; nor did they remove the case to federal court. They did nothing. On October 19, 1992, Robinson

had begun threatening seizure of Venezia's machines at the Tracer's Lounge and the Knights of Columbus, both establishments being located in St. Clair County. (R. 2) Robinson told the proprieters that in dealing with Tom Venezia, they were dealing with organized crime. (R. 2) This conduct by Robinson was a violation of the injunction, and predicated on this violation Venezia petitioned for a rule to show cause why Robinson should not be held in contempt. (R. 2)

On November 23, 1992, the U.S. Attorney's Office on behalf of Bonds Robinson, Jr., removed the case to the U.S. District Court for the Southern District of Illinois. (R. 1) Venezia filed a timely motion to remand (R. 5), a request to produce under F.R. C.P. 34 (R. 15), and a set of interrogatories under F.R.C.P. 33 (R. 15).

On April 2, 1993, the district court denied the motion to remand. (R. 21) On May 18, 1993, the district court granted the government's motions to dismiss and to dissolve the preliminary injunction; the court also denied all of Venezia's discovery requests. (R-22)

Venezia filed a timely notice of appeal. (R-23) While the appeal was pending in the Seventh Circuit, Robinson was called to testify as a witness for the St. Clair County State's Attorney's Office in the case of People v. Vogt, 93-CM-2852. Robinson testified on July 23, 27 and 29, 1993 in the St. Clair County, Illinois, circuit court. After the transcript of that testimony was prepared, Venezia moved on October 20, 1993 to supplement the record in the Seventh Circuit; however that court denied the motion without prejudice and instructed Venezia to apply first in the district court. On November 24, 1993, Venezia filed a Motion to Supplement the Record on Appeal in the U.S. District Court for the Southern District of Illinois. (R-24) That motion was denied. (R-26) Venezia next filed a Renewed Motion to Supplement Record on Appeal in the Seventh Circuit. (A-25) That motion was also denied. (A-44)

On February 9, 1994, the Seventh Circuit Court of Appeals delivered its opinion. The judgement of the district court was affirmed. In a footnote on page 3 of the slip opinion, the appeals court stated that Judge Radcliffe had engaged in "apparently inappropriate behavior" in that the "procedure (the chancery hear-

ing conducted by Judge Radcliffe on September 1, 1992) deviated from Illinois law". The court published in this footnote that it was sending its opinion and the district court's opinion to the Judicial Inquiry Board of Illinois, which is the tribunal vested with the power to discipline or remove Illinois judges. Venezia filed a petition for rehearing and a suggestion for rehearing in banc. The Seventh Circuit denied Venezia's Petition on March 2, 1994. (A-16)

I. STATEMENT OF JURISDICTION IN THE FIRST INSTANCE.

Review is sought from a judgement of the U.S. Seventh Circuit Court of Appeals. Federal jurisdiction, although challenged by Thomas Venezia, was based in the first instance on a removal by Bonds Robinson, Jr. pursuant to 28 U.S. C. §1442 (a) (1) from the Illinois state court to the U.S. District Court for the Southern District of Illinois.

J. ARGUMENT

I

There is no federal jurisdiction in this case.

The U.S. Attorney's Office for the Southern District of Illinois removed this case on November 23, 1992. This removal petition was filed 85 days after the state court issued its preliminary injunction. This petition was 55 days late. See 28 U.S.C. §1446 (b). However irrespective of the late petition, the district court and the circuit court erred in denying Venezia's motion to remand on substantive grounds.

The government removed the case on the ground that Bonds Robinson, Jr. was allegedly acting in the capacity as a federal law enforcement officer at all the times he was carrying on activities against Tom Venezia. [See slip opinion at page 4: "At **all events,** the United States Attorney contended that Robinson is a 'person acting under' a federal agent". (Emphasis added.)] The relevant statute is 28 U.S.C. §1442 (a) (1), which provides

"(a) A civil action or criminal prosecution com-

menced in a State court against any of the following persons may be removed by them to the district court of the United States for the District and division embracing the place wherein it is pending: (1) Any officer of the United States or any agency thereof, or person acting under him, for any act under color such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals."

The record shows that Robinson began his bribe attempts against Venezia during April of 1992; indeed Venezia - through his lawyer - reported Robinson on April 28, 1992. The testimony under oath out of Robinson's own mouth was as follows:

"Q. Now, before, on April the 28th of 1992 or before, were you engaged in a criminal investigation of Tom Venezia on behalf of the Federal Bureau of Investigation?

A. No."

(See R. 24, Exh. A, p. 30.)

. . . .

"Okay. And when did that -- and you've already testified, by the way, that that was -- you had not been engaged in such an investigation before April the 28th of 1992. So we know that that investigation that you're talking about began on April or some time after April 28th of 1992 but before September 1st of 1992; is that correct?

A. Yes, sir."

"Q. How soon after the April 28th date, the date that Tom Daley called to report to your supervisor, how soon after that did the investigation begin?

A. I don't remember the exact day.

Q. I didn't ask you the exact day. I said how soon after Tom Daley reported that you were trying to solicit bribes did you begin the investigation on

behalf of the FBI?

A. I don't remember.

Q. Well, let's try it this way. Was it a matter of days, weeks or months?

A. Had to be maybe weeks."

(See R. 24, Exh. A. p. 32)

Under §1442 (a) (1) Robinson had the burden of proving that he was an officer of the United States or a "person acting under" an officer of the United States "at all events" related to Thomas Venezia. Not only did Robinson fail to meet this burden, the testimony cited above from Robinson himself proves that Robinson was **not** acting in any federal law enforcement capacity before April 28, 1992. This was the date when Venezia reported Robinson's bribe/extortion attempts for the first time. Clearly Robinson was not entitled to invoke §1442 (a) (1) to protect himself from being enjoined in the St. Clair County chancery court. He was not a federal officer when he initiated his shakedown of Tom Venezia; Robinson was nothing more than a common, garden-variety extortionist.

Robinson did go to work for the FBI, but it was many weeks after the April 28, 1992 report. Robinson then started up his extortion demands again. He insisted on a meeting with Venezia, and the meeting was set for August 17, 1992. At that meeting Robinson did have a tape recording device which the FBI had given him. But please remember that this meeting was on August 17, 1992, and this fact points to one of the more glaring errors in the circuit court's decision. At page 3 of the slip opinion, the court says: "Venezia depicted himself in the state litigation as an honest businessman trying to fend off a crooked state inspector; a less charitable view would be that after getting wind that the FBI had his bribe offer on tape, Venezia tried to put a better light on things by taking the offensive." However the record proves that Venezia - through his lawyer Tom Daley - had reported Robinson's bribe/extortion demands on April 28, 1992: **This was one hundred and eleven days before there was any tape.** And on what basis did the court conclude that Venezia had made a "bribe offer on tape"? There was

no evidence of that. Robinson never said anywhere that Venezia had ever made such a "bribe offer", on tape or otherwise. Venezia on the other hand, did testify under oath that he never made any bribe offer. (See R. 2, Exh. 2, pp. 41, 45) Venezia's testimony stands unrebutted and uncontradicted in the evidence. Shouldn't he have been vindicated by the circuit court of appeals, instead of being accused of making a "bribe offer on tape"? The FBI has adamantly refused to produce the tape. They're guarding it like the crown jewels. The plain fact is that **Venezia never made a bribe offer, Robinson made bribe demands.** The tape will prove that if Venezia can ever get it. The circuit court's opinion was not only rank error, it was an unjustified and shocking smear against Tom Venezia. The only court with the power to correct the lie that Tom Venezia had made a "bribe offer on tape" is this one. If this Court will take this case and reverse on grounds of jurisdiction, Tom Venezia can pursue discovery and prove by the FBI's own tape that he has done nothing wrong.

This Court has taught that removal statutes must always be construed with a due regard for the rightful independence of state government. Shamrock Oil and Gas Corp. v Sheets, 313 U.S. 100, 61 S.Ct. 868 (1941). Moreover, a defendant like Robinson has the burden of establishing that removal is proper, and all doubts must be strictly resolved in favor of a remand to state court. Jones v. General Tire and Rubber Co., 541 F.2d 660 (7th Cir. 1976). The law is thus clear that Robinson was not cloaked with the immunity of §1442 (a) (1). Most of the cases dealing with this issue are district court decisions. See e.g. Ryan v. Dow Chemical, 781 F.Supp. 934 (E.D.N.Y. 1992); Virginia v. Harvey, 571 F.Supp. 464, (E.D.Va. 1983); Bahrs v. Hughes Aircraft Co.,795 F.Supp. 965 (D.Ariz. 1992); Illinois v. Zidek, 691 F.Supp. 1177 (N.D.Ill. 1988). Your petitioner Tom Venezia respectfully prays that this Court will grant certiorari to provide some guidance on construing this statute. Bonds Robinson began a course of bribery and extortion against Thomas Venezia many weeks before he came under the authority of the FBI. That fact was admitted out of Robinson's own mouth. Should an extortionist who has had his crime reported to authorities, then be able to escape liability because he is later taken under the wing of some federal law enforcement officer? That is what

happened here, and your petitioner prays that this Court will correct this travesty.

II

The Seventh Circuit Court of Appeals does not have the authority to arrogate unto itself the power to be the regulator of Illinois Civil Procedure.

The Seventh Circuit Court's opinion in the case at bar is repugnant to our concept of federalism. Worse than that, if the holding is allowed to stand, the Venezia v. Robinson rule will wreak a havoc that will be nothing short of a catastrophe for Illinois litigants. This court settled the question of whether federal courts could regulate state statutory schemes one hundred and fifty-two years ago. [See Swift v. Tyson, 16 Pet. 1, 10 L.Ed. 865 (1842).] In Erie v. Tomkins, 304 U.S. 64, 58 S.Ct. 817 (1938), this Court held that federal courts were required to observe a state's common-law as well. It is important that this Court grant certiorari because the Seventh Circuit opinion for all practical purposes abolishes the remedy of preliminary injunction in the state of Illinois. The opinion holds that an application for injunction can only be sought after the defendant has been served with a summons and complaint, a preposterous notion that is unprecedented in the history of Illinois jurisprudence and which conflicts with Illinois caselaw going back more than eighty years. The opinion also renders void the Illinois Code of Civil Procedure at 735 ILCS 5/11-102, making the federal court the **de facto** regulator of Illinois civil practice. This statute has its roots in the Northwest Ordinance. That the Seventh Circuit would so cavalierly poleaxe the Illinois preliminary injunction statute into a nullity is flabbergasting. The Seventh Circuit opinion also **sub silentio** overrules the Illinois Supreme Court's decision of Board of Education of Community Unit School District Number 101 v. Parlor, 85 Ill.2d 397, 424 N.E.2d 1152, 54 Ill. Dec. 249 (1981), which held that Illinois civil procedure allows informal notice - in that case a telephone call - as sufficient notice of a preliminary injunction application.

A preliminary injunction is nothing more than a TRO with

notice, see Kaplan v. Kaplan, 423 N.E.2d 1253 (1st Dis. 1981). The statute in question provides as follows:

> "No court or judge shall grant a preliminary injunction without previous notice of the time and place of the application having been given the adverse party." (See 735 ILCS 5/11-102.)

The terms "preliminary injunction" and "temporary injunction" are used interchangeably by the Illinois courts because they mean the same thing, and it is not the purpose of a preliminary injunction to decide controverted facts or the merits of a case; see Wilson v. Wilson, 577 N.E.2d 1323 (1st Dis. 1991). The purpose of a preliminary injunction is to preserve the status quo until the court has an opportunity to consider the cause on the merits or on a motion to dismiss [see Bowman Shoe Company v. Bowman, 158 N.E. 2d 112 (1959)]; and/or to prevent a threatened wrong or a continuing injury pending a full hearing on the merits of the case (see Wilson v. Wilson, id). The "notice" referred to in the statute does not require service of a summons and complaint. Indeed, before the Seventh Circuit's opinion in this case, no court in the history of Illinois jurisprudence had ever held that "notice" of an application for preliminary injunction meant service of a summons and complaint. To the contrary, notice can be made by personal service, or by leaving the notice at the defendant's business address, or by mailing the notice, see A. Daiger & Co. v. Kraft, 281 Ill.App. 548 (1936); or by leaving the notice with the defendant's attorney, see People v. Kohn, 243 Ill.App.31 (1926); or even **by telephone,** see Board of Education of Community Unit School Dist. No. 101 v. Parlor, 424 N.E.2d 1152 (Sup.Ct. 1981).

Bonds Robinson received formal notice, informal notice, written notice, oral notice, personal notice, and actual notice; in short he received every kind of notice that a person can get. If the opinion in the case at bar stands, it will in effect overrule the Illinois Supreme Court's opinion in Board v. Parlor, id, not to mention a line of precedent which goes back to at least 1913; see Eperson v. Fox, 177 Ill. App. 141.

Before the opinion in the case at bar, it was thought that the question of whether federal courts have the power to regulate the civil procedure of state courts had been setted long ago. Swift v. Tyson, 16 Pet. 1, 10 L.Ed. 865 (1842) held that even though the federal courts were not bound by a state's common law, the federal courts were still required to observe the state's statutory scheme. Erie v. Tompkins, 304 U.S. 64, 58 S.Ct. 817 (1938), overruled Swift in that the federal courts were thenceforth required to adhere to the substantive law of the state — whether that law was judge-made or statutory. But never before has any federal court sought to regulate the civil procedure of a state; never before that is, until the Seventh Circuit Court of Appeals delivered its opinion in the case at bar. The Seventh Circuit held that the "notice" referred to in section 11-102 of the Illinois Civil Practice Act doesn't mean what the Illinois legislature and the Illinois Supreme Court say that it means. In Venezia v. Robinson, the circuit court purports to engraft on the Illinois civil procedure code the rule that a party who is not served with a summons and complaint cannot be bound by a preliminary injunction, even if that party has received all the notice that the Illinois legislature and the Illinois Supreme Court say is necessary.

If the opinion is allowed to stand, it will create nothing short of colossal confusion in Illinois. Every defendant who seeks to void a preliminary injunction will cite Venezia v. Robinson for the proposition that he must first be served with a summons and complaint! Since the very nature of a preliminary injunction makes such service of process impractical if not impossible in 99.9 percent of cases, the Seventh Circuit's opinion - if allowed to stand - will have the effect of abolishing the remedy for Illinois litigants.

Before Venezia closes on this point, another error must be noted. The slip opinion at page 4 asserted that:

> "A subpoena is not a summons, and, the district court concluded, handing the defendant a copy of the complaint in open court (as Venezia's lawyer did on September 1) does not satisfy either state or federal requirements of service. Venezia does not contest this conclusion."

On page 17 of his brief, Tom Venezia did just that. (See A-24.) Venezia did contest the district court's conclusion and assigned it as error in the Seventh Circuit.

III

Thomas Venezia had the right to have the extortion and bribery against him enjoined, even if that extortion and bribery were committed by Bonds Robinson, Jr. in his capacity as a federal law enforcement officer.

It has already been shown under the first point that Bonds Robinson, Jr. was not acting as a federal officer when he initiated his extortion/bribery scheme against Venezia in April of 1992. Not even the government would argue that Venezia should be barred from seeking injunctive relief in the state court to enjoin extortion by a corrupt state official, who was not acting in a federal law enforcement capacity. (At least, one would not think that the U.S. Government would advance such an argument.) The next question is, even if Robinson had been acting under authority of the FBI, should he have been allowed to demand a $250 per week bribe? And when Venezia refused to pay, should FBI agent Robinson then have been allowed to seize Venezia's vending machines? The Seventh Circuit says "(t)hese are complex issues", and the court waxes whimsical about whether Tom Venezia "could recover for his loss by bringing suit under the Tucker Act". (See slip opinion, p. 5.) With all due respect, the Seventh Circuit and the U.S. Justice Department in southern Illinois need to become reacquainted with the Bill of Rights. Instead of writing a Kafkaesque analysis about potential litigation under the Tucker Act, the court should have recognized the outrage perpetrated against Tom Venezia, and reminded the government that we have had this rather quaint notion in our Contitutional system since June 21, 1788. We call it the Fifth Amendment and it says: "nor (shall any person) be deprived of life, liberty, or property, without due process of law". Where was Tom Venezia's right to due process when Bonds Robinson, Jr., deprived Venezia of his property, because Venezia wouldn't cough up a weekly bribe of $250.00? Even if Robinson was an FBI operative,

that doesn't give him the right to commit extortion.

That Robinson and his FBI handlers ran a protracted bribery/extortion scam against Thomas Venezia is bad enough. That the Seventh Circuit allowed them to get away with it, and then smeared Venezia with the lie that he had made a "bribe offer on tape" is scary. Most ominous of all however, is that the court of appeals would go to the astonishing length of abolishing the ancient statutory remedy of preliminary injunction in the state of Illinois, in order to keep the government's jackboot on Tom Venezia's throat. This Court should grant its writ of certiorari, and set this manifest injustice right.

IV

Thomas Venezia had the right to engage in the lawful vending business in Belleville, Illinois, without FBI agent Bonds Robinson, Jr. interfering with that lawful business by telling the Belleville Liquor Commissioner that the FBI had a videotape of Thomas Venezia bribing president Bill Clinton.

The mayor of Belleville is also the city's liquor commissioner. During Robinson's testimony in People v. Vogt during July 1993, Robinson testified that in October 1992 (after the preliminary injunction had been issued and while it was still in effect) he (Robinson) had told the mayor that the FBI had videotapes of Tom Venezia passing money to Bill Clinton in Collinsville, Illinois. (See e.g., R. 24, Exh. A, pp. 38-41, 111.) Although Robinson denied it, the implication was that Venezia had passed this money as a bribe to Clinton while Clinton was campaigning in southern Illinois. Robinson also denied that the purpose behind his having told the Belleville liquor commissioner this information was to interfere with Venezia's business. But there could have been no other reason. Now those of us familiar with the mentality of the federal law enforcement apparatus in southern Illinois, would have no doubt that they were videotaping and surveilling Bill Clinton as he campaigned in the area. However, as was asserted in Tom Venezia's pleadings before the district court (see R.15), Tom Venezia has never met Bill Clinton. Robinson was lying to the Belleville liquor

commissioner. And in the telling of the lie, Robinson was violating the injunction which prohibited him from "interfering with Thomas Venezia's business". (See R.2) This is yet another reason why this court should grant certiorari. A citizen ought to be able to conduct his business without malicious lies from the federal government to the local regulators of that business. At the very least, that citizen ought to have the right to go into court and invoke the court's equitable powers in order to stop such misconduct.

V

Thomas Venezia should have had the same right to conduct discovery as every other litigant, the right this court explained in Herbert v. Lando, 441 U.S. 153, 99 S.Ct. 1635, 60 L.Ed.2d 115 (1979)

Among the many gems in the Seventh Circuit opinion, the court gave us this: "To win the confidence of hoodlums, federal agents sometimes must speak and act like hoodlums." (Slip opinion, p. 5.) But shouldn't Venezia have had the right to show that the real "hoodlum" was Bonds Robinson, Jr.? Shouldn't Venezia have had the right to conduct discovery, to have interrogatories and production demands answered, to depose Bonds Robinson, Jr.? Shouldn't Venezia have had the right to prove that in a credibility contest, Venezia was the honest citizen while Bonds Robinson, Jr. was the consummate liar? The district court denied Venezia these rights, and the Seventh Circuit affirmed. Venezia would have had no way to attack Robinson's credibility, but for the fortunate case of People v. Vogt, 93-CM-2852 (St. Clair County). Because Venezia was no longer protected by the injunction, and because Venezia persisted in his refusal to pay Robinson his bribe/extortion money, Robinson resumed his attack on Venezia's business in 1993. He seized several of Venezia's vending machines from one of Venezia's customers - George Vogt. During a hearing in the Vogt case, which took place on July 23, 27 and 29 of 1993, Vogt's attorney elicited facts from Robinson on cross-examination. This evidence would have been adduced in discovery in the case at bar, but for the fact that the district court refused to allow Venezia to conduct discovery.

Robinson admitted under oath in the Vogt case that he had been fired as a Centreville police officer for raping a prostitute in the back seat of his police car. (See R. 24, Exh. A, p. 107.) It should go without saying that if Venezia could have presented this evidence to the district court, that court would have seen that Robinson had no credibility; and the court would have also seen Robinson's affidavit on removal for what it was - a lie. Also elicited from Robinson during cross-examination at the Vogt hearing was the fact that Robinson was **not** engaged as a federal officer when he initiated his bribery/extortion scheme in April of 1992. If Robinson could have been deposed, Venezia could have shown the district court this fact, and proved that the affidavits on which the removal was predicated were false. Thus if Venezia had not been denied the fundamental right afforded to every other litigant in the United States of America - the right to depose his adversary - Venezia could have shown a clear right to have the case remanded. The Seventh Circuit of course, compounded this error by affirming it, which brings up the next point.

The court of appeals slip opinion at page 6 said: "Venezia served interrogatories and requests for production, seeking to pierce the affidavits (on which the removal to federal court was based). Some of the requests were bizarre. Request 1, for example, reads: 'Produce any and all video-tapes which purport to show Thomas Venezia, and/or Bill Clinton'". The Seventh Circuit would not have considered the request so bizarre however, if Venezia would have been allowed to show through discovery that the FBI had been spreading the lie that it had a videotape of Tom Venezia bribing the president. Now the southern Illinois federal law enforcement people may indeed have video surveillances of Bill Clinton, and they may have video surveillance of Tom Venezia. But unless the tapes have been doctored there is no recording of Venezia and Clinton together, because they've never been together. That was the Catch-22 Venezia found himself in: In order to show that the case should be remanded, Venezia had to pierce the affidavits; in order to do that - i.e. in order to show that the affidavits were false - Venezia had to have discovery. However Venezia was not allowed discovery because his requests were deemed to be bizarre, but of

course that was because Venezia could not adduce evidence through discovery to show that the requests were not bizarre; therefore Venezia was unable to show that the affidavits were indeed false. Could Franz Kafka have concocted a fictional scenario more excruciating than the real-life situation Tom Venezia found himself in?

What should have happened here is not complicated. The Seventh Circuit and the district court should have simply allowed Thomas Venezia the fundamental, basic right to conduct discovery. In Herbert v. Lando, this Court taught:

> "The Court has more than once declared that the deposition-discovery rules are to be accorded a broad and liberal treatment to effect their purpose of adequately informing the litigants in civil trials. Schlagenhauf v. Holder, 379 U.S. 104, 114-115, 85 S.Ct. 234, 241, 13 L.Ed.2d 152 (1964); Hickman v. Taylor, 329 U.S. 495, 501, 507, 67 S.Ct. 385, 388, 391, 91 L.Ed. 451 (1947)." (See 99 S.Ct. at 1649.)

Your Petitioner respectfully asserts that the Seventh Circuit Court of Appeals erred in its judgment that Tom Venezia should have been denied his right to discovery. But for this error, Venezia could have proved that the federal court was without jurisdiction because the affidavits of Robinson and the other federal officers were false.

VI

Judge James Radcliffe of the Illinois State Chancery Court had the jurisdiction and the right to rule on issues properly before him without the U.S. Seventh Circuit Court of Appeals complaining against him to the Illinois Judicial Inquiry Board.

To put the argument under this point in context, it is necessary to revisit part of the argument made under a previous point. The Circuit Court's opinion was riddled with flagrant errors, among which were:

"Between the seizures (of Venezia's vending machines) Bonds Robinson, Jr., one of the agents, sent word to Venezia that he could avoid further interruptions in business by paying graft." (Slip opinion, p. 2) But we know from the record that Robinson did not demand graft "between the seizures". Robinson had started demanding "graft" before April 28, 1992, the date Tom Venezia reported Bonds Robinson's demands for "graft" to Eric Wisette - Robinson's superior. Why would the court of appeals report such a false statement about Tom Venezia?

"During a two hour meeting with Robinson, Venezia promised to buy $250 per week in merchandise from Robinson's wife." (Slip opinion, p. 2) But there is nothing in the record to suggest that Venezia had made such a promise. Robinson never said any such thing. Venezia swore that he did not. This "two-hour" meeting took place on August 17, 1992, and it was recorded on audio tape by Robinson at the FBI's request. The FBI refuses to produce the tape, and the court of appeals didn't have it before them. Why would the court report another false statement about Tom Venezia?

"In other words, Robinson was participating in a sting operation, trying to find out whether Venezia would pay bribes to avoid close supervision by state regulators." (Slip opinion, p. 3) But the record proves that Venezia reported Robinson on April 28, 1992, long before any "sting operation". Why would the court of appeals make this false statement?

"Venezia depicted himself in the state litigation as an honest businessman trying to fend off a crooked state inspector; a less charitable view would be that after getting wind that the FBI had his bribe offer on tape, Venezia tried to put a better light on things by taking the offensive." (Slip opinion, p. 3) But the record proves that Venezia had reported Robinson the first time on April 28, 1992, **one hundred and eleven days before there was any tape to get wind of.** And no one - not even Robinson - has ever alleged that Venezia ever made a "bribe offer". Why would the court of appeals report this false statement about Tom Venezia?

The above statements by the Seventh Circuit Court about Tom Venezia are false, malicious (that is, published with knowledge that the statements were false), and defamatory. Why would the court

say these outrageous things? One wonders whether there is something going on here other than the scholarly resolution of legal issues. Which leads to the argument on this point.

The most incredible and breathtaking and flabbergasting part of the opinion, is the footnote at page 3. The court says that in the way Judge Radcliffe handled the hearing, he "deviated from Illinois law". The court refers to Judge Radcliff's conduct of the hearing as a "parody". But the finding by the Seventh Circuit that Judge Radcliffe engaged in a parody is itself a parody. The Seventh Circuit predicated its finding on the fact that Robinson had not been served with a summons and complaint. Your petitioner spent many pages under Point II of this petition explaining that the statute in the Civil Practice Act (735 ILCS 5/11-02) requires only that "notice" be "given the adverse party", and that notice can be formal, informal, in-person, by mail or telephone, orally or in writing. Robinson was "noticed" in advance of the hearing by serving Robinson with a subpoena, and at the hearing Robinson was handed a copy of the petition. Thus Judge Radcliffe had not "deviated from Illinois law" in any respect. [The Seventh Circuit opinion at page 2 says that Robinson was not permitted to put on a defense. The record proves that statement by the court is false; but more importantly the Seventh Circuit's assertion that a preliminary injunction hearing requires a full litigation on the merits - i.e. "a defense" - shows just how ignorant of Illinois law the court was. See e.g. Wilson v. Wilson, 573 N.E.2d 1323 (1st Dis. 1991).] Based on the faulty premise that Judge Radcliffe had "deviated from Illinois law", the Seventh Circuit "not(ed) apparently inappropriate behavior" by Judge Radcliffe, and unbelievably the court complained against Judge Radcliffe to the Illinois Judicial Inquiry Board. And as if that were not enough, the court published its complaint in the opinion.

One wonders just what ethical turpitude Judge Radcliffe was supposed to have committed, even if he had deviated from Illinois law. More troubling however, is the question of how the case at bar can be squared with U.S. v. Canino, 949 F.2d 928 (7th Cir. 1992), delivered by Judges Manion, Easterbrook and Esbach. (Judge Easterbrook spoke for the court of appeals in the case at bar.) In the

Canino case, the Seventh Circuit described the misconduct of a certain government prosecutor from the U.S. District Attorney's Office in the Southern District of Illinois, which took place during proceedings in E. St. Louis, Illinois (and which, coincidentally, is in St. Clair County, the place where Judge Radcliffe was presiding over the chancery court in 1992). The Canino court reported that the government prosecutor threatened his adversary in a hostile manner, telling the adversary that he was in "serious trouble", that the prosecutor would "get him (the adversary)." These threats constituted the offense of Intimidation (see 720 ILCS 5/12-6) which is a felony punishable by a five year prison term. ("Intimidation" is the term used by the court of appeals to describe the prosecutor's conduct, and that conduct meets the elements of the crime.) Moreover the prosecutor threatened the adversary a second time, warning the lawyer that he (the prosecutor) would break the nose of the lawyer if the lawyer continued to be too zealous in representing his client. This second threat would have been yet another Intimidation felony, punishable by yet another five years in prison. It would also have constituted the crime of Aggravated Assault. The prosecutor also told the lawyer "You are a pussy", and "You have no balls"; both of which were violations of Illinois Supreme Court Rule 752, conduct tending to defeat the administration of justice or tending to bring the legal profession into disrepute, conduct for which Illinois lawyers are routinely disbarred. But all of this was not the first time that the Seventh Circuit Court of Appeals had found this particular government prosecutor to be guilty of misconduct. In U.S. v. Mealy, 851 F.2d 890 (7th Cir. 1988) the court found that this same prosecutor had violated ethical standards, and rebuked him in the opinion.

Nevertheless, this government prosecutor was not reported to the Administrator of the Illinois Attorney Registration and Disciplinary Commission, nor did the panel or the court refer the matter to the district court for disciplinary action. The question arises as to why the court would treat serious misconduct by a government lawyer so cavalierly (see 949 F.2d at 936). Perhaps the Seventh Circuit doesn't believe that government lawyers should be held to the same standards as associate judges in the Illinois courts; or

perhaps the court thinks federal prosecutors should be afforded a certain 'boys will be boys' latitude. A less charitable view would be that there is something going on here, in the instant case; something more than just the court of appeals going about its business of deciding issues of law.

Unfortunately, Tom Venezia doesn't know what that is. But on the other hand, it is not necessary that he know. It is only important that this Court see that the Seventh Circuit Court of Appeals made numerous and profound and prejudicial errors of law, with enormous consequences. These errors effect not only Tom Venezia's rights and property, but they also effect every litigant in Illinois who seeks to invoke the preliminary injunction statute. Moreover Judge Radcliffe - who was only doing his duty and doing it quite properly - finds himself now having to defend against an unknown charge before the Judicial Inquiry Board. If certiorari is not granted, every state judge in Illinois will have to wonder whether he or she might be hauled before the Judicial Inquiry Board, simply because the Seventh Circuit whimsically decides that the state judge has "deviated from Illinois law".

VII
The Seventh Circuit erred in denying Venezia's motion to supplement the record.

The court of appeals affirmed the district court's order which denied Venezia the right to conduct any discovery. Later in People v. Vogt, evidence was adduced which proved: 1) Robinson was not acting as a federal officer at all events involving Venezia. 2) Robinson was fired for raping a prostitute in the back seat of his police car, showing a distinct lack of credibility. 3) The FBI in southern Illinois claims to have a videotape of Tom Venezia passing money to President Clinton, and Robinson has been spreading the lie that Venezia bribed the president. This point has already been argued extensively. Suffice to say that the Seventh Circuit's denial of Venezia's motion to supplement the record was error, especially given the fact that Venezia was never allowed the opportunity to adduce this evidence in discovery.

CONCLUSION

What is a citizen like Tom Venezia to do? He has committed no crime. He has not even been accused of a crime. He reported Bonds Robinson to Robinson's superior on April 28, 1992. When Robinson came back at him even more aggressively several weeks later, Venezia reported Robinson to the State's Attorney of St. Clair County and to the FBI. The State's Attorney and Venezia's lawyer together agreed on a plan to stop Robinson's extortion, and the State's Attorney called Robinson to the courthouse on a pretext. This was done on September 1, 1992, in order to set Robinson up for Venezia's preliminary injunction hearing. Venezia went into court, and meticulously observing the procedures of the Illinois Civil Practice Act, he obtained an injunction which prohibited Robinson from extortion. (And that's all, the injunction simply prohibited that which was illegal in the first place.) What has Venezia gotten in return? The federal police have sicced their police-car rapist on him, seizing his property and threatening his customers. The U.S. Attorney has had Venezia's only protection - the preliminary injunction - dissolved. The Seventh Circuit Court of Appeals has vilified him with lies, and has even made a casualty of the state judge who enjoined the extortion. And in their latest move, the local federal police attacked Tom Venezia in a way that would have made Tomas de Torquemada proud: The CID of the IRS visited him and subpoenaed all his records. (See A-45-47.) When all else fails, a criminal tax investigation might be counted on to come up with something. (Although Venezia produced these records nearly a year ago, so apparently nobody has been able to manufacture any crime from them.)

Tom Venezia is now at the mercy of a rapacious, remorseless, relentless, predatory extortionist. Venezia was stripped of the protection of the Illinois state courts, and the federal courts in Illinois have seen fit to join the federal police juggernaut against him. They've vilified him, seized his property, accused him of bribing the President of the United States, and tried to hound him into a prison pen with manufactured crimes. Along the way, the ancient statutory remedy of preliminary injunction has been abolished in Illinois, and a state judge who only followed the law has been laid out on the rack. The only court left to set this right, the only court left to protect Venezia's rights, is this one. Tom Venezia prays that this Court will issue its writ of certiorari.

AMIEL CUETO (#3126600)
Counsel of Record
for Thomas Venezia